

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREW E. ROTH, derivatively on behalf
of Metal Management Inc.,

Plaintiff,

-against-

T. BENJAMIN JENNINGS,
Defendant.

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DEBORAH A. BATTES, United States District Judge.

Plaintiff Andrew E. Roth brought a derivative suit in this Court on behalf of nominal defendant Metal Management, Inc. ("MMI"), against T. Benjamin Jennings and European Metal Recycling, Inc. for disgorgement to MMI of "short-swing profits" under § 16(b) of the Securities Exchange Act. On February 1, 2006 this Court granted Defendants' Motion to Dismiss.

Plaintiff appealed from that decision, and on June 6, 2007, the Second Circuit issued an opinion in this matter reversing and remanding the case back to this Court. By that Opinion the Circuit affirmed the dismissal of the claim against European Metal Recycling but remanded for further proceedings against individual Defendant Jennings. Roth v. Jennings, 489 F.3d 499 (2d Cir. 2007). On July 13, 2007, the Court granted the motions of Defendant's counsel to withdraw. (03-cv-7760, dkt no. 34.) Defendant Jennings is now pro se. On October 19, 2007, this

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IN THE UNITED STATES DISTRICT COURT
DOC #:
DATE FILED: 24 Mar 08

03 Civ. 7760 (DAB)

ORDER

Court referred the action to United States Magistrate Judge

Theodore Katz. (03-cv-7760, dkt no. 32.)

On February 14, 2008, Judge Katz issued a Report and Recommendation in this matter. The Report stated that "[b]ecause Jennings failed to appear at the Court's scheduling conference, and has failed to respond in any way to Plaintiff's communications regarding discovery, as well as this Court's Order to Show Cause, the Court respectfully recommends that a default judgment be entered against Defendant Jennings...." (03-cv-7760, dkt no. 36.) Objections to the Report, if any, were to be submitted by February 27, 2008. After that period had elapsed, on March 6, 2008, the Court received in Chambers a Declaration of pro se Defendant T. Benjamin Jennings alleging that he had recently suffered health problems but providing no confirmatory documentation and no explanation of why he ignored Plaintiff's efforts to contact him and Judge Katz's Order to Show Cause.

Having reviewed the Report and Recommendation, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of United States

Magistrate Judge Katz, dated February 14, 2008, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety;

2. This Action is hereby referred to Magistrate Judge Katz
to conduct an inquest into damages.

Dated: New York, New York

March 31, 2008

Deborah A. Batts
Deborah A. Batts
United States District Judge